

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Midwest Independent Transmission)
System Operator Inc.**

Dkt. Nos. RT01-87-006 and ER02-108-004

**COMMENTS OF THE
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.211, the Illinois Commerce Commission ("ICC") hereby submits its Comments on the filing submitted by the Midwest ISO in Docket Nos. RT01-87-006 and ER02-108-004 on January 28, 2002. In support hereof, the ICC states as follows:

I. BACKGROUND

On January 28, 2002, the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") tendered for filing with the Federal Energy Regulatory Commission ("FERC" or "Commission") a compliance filing pursuant to the Commission's Order issued in these proceedings on December 20, 2001. 97 FERC ¶61,326 (2001). Specifically, the Midwest ISO's compliance filing addresses the following directives given by the Commission in its Midwest ISO RTO Order:

- (1) the Commission's directive that the Midwest ISO revise the Midwest ISO Agreement to eliminate the Transmission Owners' veto privileges regarding pricing. Midwest ISO RTO Order at ____ (mimeo at 13);
- (2) the Commission's directive that the Midwest ISO revise the Planning Framework of the Midwest ISO Agreement to give full consideration to all market perspectives in identifying expansion projects critically needed to support competition as well as meeting reliability needs and to make it possible for third-parties (*i.e.*, merchant transmission projects) to participate in

the construction and ownership of new transmission facilities. Midwest ISO RTO Order at _____ (mimeo at 43);

- (3) the Commission's directive that the Midwest ISO amend its tariff to require that ancillary services be provided or procured at least cost. Midwest ISO RTO Order at _____ (mimeo at 33);
- (4) the Commission's directive that the Midwest ISO re-file its Market Monitoring Plan as a properly formatted attachment to the Midwest ISO's OATT. Midwest ISO RTO Order at _____ (mimeo at 40); and
- (5) the Commission's directive that the Midwest ISO implement a 45-day deadline in the market monitoring Plan to either agree to implement a recommendation made by the Independent Market Monitor ("IMM") or disagree with recommendations made by the IMM. *Id.*

The ICC's Comments herein are limited to addressing the fourth issue on this list (i.e., the refiling of the Market Monitoring Plan in a tariff format).¹ The ICC recommends that the Commission: (1) not grant final approval of the Midwest ISO's Market Monitoring Plan; and (2) "remand" the Market Monitoring Plan and Market Monitoring Contract back to the Midwest ISO with orders to engage its advisory process and correct the flaws in both the Plan and in the Contract.

The Comments filed in this proceeding represent the latest in a series of Comments the ICC has submitted to the Commission regarding the Midwest ISO's market monitoring proposal. On November 19, 2001, the ICC submitted extensive Comments on the Market Monitoring Plan that the Midwest ISO filed with the Commission on October 15, 2001. In that particular pleading, the ICC identified major concerns with the Plan in the areas of market monitor independence, state commission access to necessary market monitor information, absence of market power mitigation measures in the Plan, and several more minor issues. The Commission, nevertheless, conditionally approved the Midwest ISO's Market Monitoring Plan in the

¹ The text of the Midwest ISO's Market Monitor Plan filed on January 28, 2002 is effectively the same as that filed on October 15, 2001, with the addition of Section 9.3 concerning the Midwest ISO's response to Market Monitor reports. The ICC has no Comment on that new provision of the Plan.

December 20, 2001, Order despite the ICC's stated concerns. Consequently, the ICC followed up on January 18, 2002, with a Request for Rehearing of FERC's approval of the Market Monitoring Plan. On February 7, 2002, the ICC submitted Comments on the Contract between the Midwest ISO and Potomac Economics that the Midwest ISO submitted on January 17, 2002, pursuant to the Commission's December 20 Order. The ICC's Comments in that case illustrate that the terms of the Market Monitoring Contract:

- (1) will allow the Midwest ISO to control the Market Monitor through control of the budget, control of payments under the budget and control of contract termination;
- (2) will improperly require the Market Monitor to act as the agent of the Midwest ISO through "advising" and "reporting";
- (3) are inconsistent with the terms of the Market Monitoring Plan; and
- (4) create conflicts of interest for the Market Monitor.

In short, the ICC's conclusion concerning the Market Monitoring Contract, as well as the Market Monitoring Plan, is that these documents, in tandem, demonstrate that the Midwest ISO's Market Monitoring Plan is flawed and that the market monitoring framework established by the Midwest ISO will prevent the Market Monitor from acting independently of the Midwest ISO.

II. MARKET MONITOR INDEPENDENCE

In its December 20 Order, the Commission ruled that the Market Monitor must be "truly independent" of the Midwest ISO for the Midwest ISO's Market Monitoring Plan to receive final Commission approval. Specifically, the Commission stated,

Without knowing the details of the contract we cannot be sure that the IMM [independent market monitor] is truly independent of the RTO.

December 20 Order at 37. Underlining added.

The Commission committed to reviewing the Market Monitor Contract to ascertain whether or not the Market Monitor will be “truly independent” of the Midwest ISO. Specifically, the Commission stated as follows:

Assuming that we are satisfied following review of the actual contract with Potomac Economics, that the IMM will be truly independent . . .

December 20 Order at 37. Underlining added.

The ICC, reiterating the previous positions it has taken with regards to the Midwest ISO Market Monitoring Plan, asserts that the Market Monitor is not and will not be independent of the Midwest ISO under the current framework. As a result, the Midwest ISO’s Market Monitoring Plan should not be approved by the Commission. The ICC requests that its previously-filed Comments on Market Monitor independence be incorporated by reference herein.²

III. OTHER ICC CONCERNS WITH THE MIDWEST ISO’S MARKET MONITORING PLAN

As stated above, the ICC’s previously filed Comments on the Midwest ISO’s Market Monitoring Plan also identified major concerns with the Plan in the areas of state commission access to necessary market monitor information, absence of market power mitigation measures in the Plan, and several more minor issues. As with its Comments concerning lack of market monitor independence, the ICC wishes to incorporate its previously-filed Comments on these other issues by reference herein.

² See ICC Comments on MISO Market Monitoring Plan (filed Nov. 19, 2001), ICC Request for Rehearing (filed on Jan. 18, 2002), and ICC Comments on Market Monitoring Contract (filed on Feb. 7, 2002).

IV. CONCLUSION

Wherefore, for all of the reasons explained above, the Commission should: (1) not grant final approval of the Midwest ISO's Market Monitoring Plan; and (2) "remand" the Market Monitoring Plan and Market Monitoring Contract back to the Midwest ISO with orders to engage its advisory process and correct the flaws in the Plan and in the Contract identified by the ICC.

Dated: February 20, 2002

Respectfully submitted,

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ILLINOIS COMMERCE COMMISSION

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